

“Streamlining the Regulatory Regime — the U.S. Experience”

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OVERVIEW

In the United States, the Minerals Management Service (MMS) of the Department of the Interior is the agency with overall responsibility for regulating the Federal offshore oil and gas program.

The U.S. offshore oil and gas program has been in operation for close to 50 years. Regulatory practices have changed significantly based in part on experience, technological advances, and in response to societal pressure.

The MMS program is now characterized by an emphasis on performance rather than compliance, clarity and simplification of government requirements, and a greater reliance on industry standards. Also important is the sense that there is transparency and stability to the process -- everyone knows what the rules are, and they are applied equally across the board.

Offshore oil and gas resources will play an increasingly pivotal role in future energy supplies with the potential for significant energy, economic, and environmental benefits. The challenge will be for all of us to develop ways to ensure safe and environmentally sound development that is achieved at the lowest cost possible.

EVOLUTION OF THE UNITED STATES PROGRAM

The Prescriptive Approach

To a large degree, the early U.S. offshore program was an extension of state activity with regulatory practices often mirroring those of the adjacent coastal state. The technologies used were a relatively straightforward application of onshore operations and limited to areas close to shore in shallow water. At this time little public attention was focused on the environmental and safety aspects of offshore oil and gas activities because no serious accidents had occurred.

The Santa Barbara, California oil spill, in 1969, focused the country's attention on offshore oil and gas operations, leading to an in-depth review of the way in which the U.S. Government regulated these activities. Beginning in the early 70's, a series of detailed prescriptive regulations were issued that

governed all phases of exploration, development, and production activities. The thinking was that to ensure the public that operations were conducted safely, the regulatory agencies needed to have a comprehensive check list of actions industry needed to follow. It would inspect those activities, penalize the operators when violations of the rules were detected and assume that operations were safe if the rules were met. Thus, the government was accepting responsibility for the safety of operators whereas the responsibility properly belonged to the operator. This government acceptance of responsibility for safety led to a compliance mentality.

Advances in technology occurred, but the fact that technology alone was not enough to ensure safe operations was brought home by the very tragic Piper Alpha accident in the North Sea, in 1988, which resulted in significant loss of life. One of the major findings of the Lord Cullen report, an in-depth review of the causes of that tragedy, was that there needed to be a greater emphasis on developing a systematic approach to safety that placed a much heavier emphasis on the human factor and safety management systems. This systematic approach also places a much heavier responsibility on the operator for safe activities. Similar reviews of regulatory approaches conducted in the United States concurred with the Lord Cullen finding. Historical analyses indicate that about 80 percent of offshore accidents are due to human failure; not systems or technology failure. This has led regulators to focus more on the importance of operators adopting safety management systems than on regulators developing prescriptive requirements.

Performance is Now the Key

In 1991, MMS introduced the concept of a Safety Environmental Management Program (SEMP) to industry. The basic concept behind SEM is that on a voluntary basis, industry would develop, document and implement a structured, systems-level safety management program. Industry responded by developing American Petroleum Institute Recommended Practice 75 (API RP75), which provides a guide to assist companies in developing safety management programs. The underlying principle of API RP75 is "Management is responsible for the overall success of the safety and environmental management program. Management provides leadership in establishing goals, demands accountability for implementation, and provides necessary resources for carrying out an effective program." By 1997, 93 percent of operators on the OCS accounting for

99 percent of offshore oil and gas production had adopted SEMP plans. Additionally, by 1998, 60 percent of operators had provided their performance information to both industry associations and the MMS. The operations of these companies, in 1998, encompassed 75 percent of offshore facilities and more than 92 percent of offshore oil and 77 percent of offshore natural gas production respectively.

MMS will also allow operators the opportunity to propose alternative regulatory approaches if they can demonstrate an equal or higher level of safety performance. We will give approval to an operator to use alternate procedures or equipment if these provide a level of protection to the environment and ensure a measure of safety that is equal to or surpasses the current requirements. In determining whether to give approval, we look at the site-specific applications and the operator's performance record.

In November 1998, the MMS and the Gulf of Mexico Offshore Operators Committee, with support from industry associations, co-sponsored a set of Best Management Practices Workshops. The workshops featured "pacesetting companies" who shared their management systems with over 400 attendees. Those who attended were company and contractor personnel (management and staff) accountable and/or responsible for safety, environmental, and regulatory performance. Each presenter showed how safety systems (organization, not technical) helped to achieve superior performance. The workshops demonstrated an excellent use of performance data in the form of best management practice sharing. As a result of the positive response generated by the workshops, we plan to make this an annual event. This type of workshop is an excellent example of how industry and government can work together in support of common goals.

ELEMENTS OF MMS'S REGULATORY APPROACH

A Performance Based Example - Training Requirements

Training of offshore workers has been an area where we have previously relied on a prescriptive set of regulations rather than fostering a corporate safety culture. In the training area, the U.S. is now moving away from requiring workers that are engaged in well control and production safety system operations to attend government accredited schools to a system where

it is the operator's responsibility for ensuring workers are properly trained. As part of our audit of safety management systems, the effectiveness of operator and contractor training programs will be assessed, and our time and effort will be applied to those companies that have workers who do not have the proper skills for their assigned tasks. Under such a program, companies, not the regulator, will be responsible for developing their own training programs.

Incorporation of Industry Standards

We likewise have been changing other regulatory requirements to better reflect our increased emphasis on voluntary industry standards. These standards of industry's best practices are not written into our regulations, but rather are referenced in our regulations. We have a long history of incorporating voluntary industry standards into our regulatory scheme as part of our Best Available and Safest Technology philosophy. Currently, 82 private sector, technical standards are referenced in our regulatory program, with the preponderance being consensus standards developed by the American Petroleum Institute.

Industry standards referenced in our regulations are valuable because they enable us to avoid unnecessary detail. In other cases, they allow us to avoid regulation completely. They have also helped us to evolve from a regulatory process which reacts to inadequacies to a more orderly process which recognizes technical innovation and progressive ideas aimed at improving performance, safety and efficiency.

Because we are regulating a global industry, one of our program goals is to develop a comprehensive set of nationally recognized, internationally compatible technical standards. We participate with national standards developing organizations such as API, the American Society for Testing and Materials, the American Society of Mechanical Engineers, the American Gas Association, and others.

Similarly, we are helping to develop compatible technical standards by participating with international standards setting organizations such as ISO, the International Organization for Standardization. We plan a more active involvement in international standards development because we believe that over time international standards will be more widely accepted and applied. If

these standards are based on sound technical grounds, their adoption can lower costs and facilitate safe operations around the globe.

For example, in August 1998, we became an active participant in the U.S. Technical Advisory Group (TAG) to ISO Technical Committee (TC) 67 (Materials, Equipment and Offshore Structures for Petroleum and Natural Gas Industries). In connection with this participation, we have gained membership on four U.S. SubTAGs so that we may participate as members of the U.S. delegation at ISO Subcommittee meetings.

Clarity and Simplification of Requirements

We are now rewriting our regulations to make them clear to understand and easy to read. Readable regulations help the industry find requirements quickly and understand them easily. They also increase compliance, strengthen enforcement, and decrease mistakes and distrust of government. An important component in the rulemaking process is to allow industry the opportunity to comment before rules are issued in final.

In addition to regulations, we have issued numerous official documents to supplement and interpret the regulations in the form of Notices or Letters to Lessees (NTLs/LTLs). These documents often lacked uniformity or were not issued in a consistent manner to allow for systematic tracking and identification. In some instances they imposed requirements that could be interpreted as circumventing the regulatory public comment process.

Along with the streamlined regulatory process, we are eliminating the LTLs and reducing the number of active NTLs. In those cases where we need to continue to provide guidance on and interpretation of our regulations, we are rewriting the NTLs in the plain language style, consolidating related subjects, and issuing them in a numbered and identifiable manner. As we revise our existing regulations, we are ensuring that any requirements not specifically addressed are incorporated into the revised rulemakings. Our goal is to reduce redundancy in our regulations and to consolidate requirements into as few documents as possible. We also want easy access to our requirements through our World Wide Web homepage—www.mms.gov

Using Agreements to Streamline Government

We use agreements with other agencies to minimize duplication between agencies that have overlapping responsibilities, and to ensure that industry will only need to respond to one agency. The result is a more efficient and effective government. While the majority of the responsibility for regulating the offshore program resides in MMS, other agencies have certain responsibilities that have the potential to overlap with those of MMS. A good example of how we have dealt with this issue is the 1998 Memorandum of Understanding (MOU) between MMS and the U.S. Coast Guard which outlines the lead agency responsible for managing each system of offshore oil and gas development. We are now implementing the MOU by reviewing the standards of both agencies for consistency, eliminating duplication in our inspection programs, sharing incident data to prevent accidents, and developing a single point incident reporting system.

The 1996 MOU with the U.S. Department of Transportation (DOT) concerning OCS pipelines is also representative of our effort to increase partnership with other Federal agencies and to enhance the safety of offshore operations. Under the MOU, MMS inspectors will act as DOT's agents by conducting inspections of DOT-regulated transportation pipelines on the OCS. The DOT is developing a training program for MMS inspectors to carry out these responsibilities. Our two agencies are also developing compatible operating, maintenance, and safety regulations to minimize overlapping or confusing requirements for pipeline operators on the OCS.

Inspection Strategy

We are also revising our inspection strategy to reflect this emphasis on performance. Statistical sampling is being used to identify which safety devices need to be tested to identify any systemic problems. Resources are being directed at problem operators who are identified by ongoing review of safety indices. This has required a greater emphasis on agreeing upon what is a good measure of performance as well as keeping consistent and easily retrievable records. Good performers are now receiving less scrutiny, and our efforts are being focused on companies whose performance is lacking. This saves both the government and good performers money. Our inspection force is also being trained to do audits of safety systems, which deal more with an overall safety management culture rather than individual valves, pumps, and safety devices.

Annual Performance Review

Another essential component of emphasizing performance over process is the institution of annual performance reviews. These reviews are conducted on an operator's entire portfolio of activities in a region, which for the largest operator in the Gulf of Mexico can encompass activity on up to 520 facilities. For large companies, this annual review provides an opportunity to discuss performance of a number of different business units with different regulatory managers. This helps ensure a corporate focus on safety management. The development of performance measures, the development of safety indices and the continuing collection of data on both an industrywide and individual operator basis, allows both the operators and us to compare a company's performance with industry averages during the annual review. For those operators with above average performance, the “pace setters”, we can discuss their best practices with the intent of finding ways to share them with other operators. For those with less than stellar performance, the focus is on what steps the operator can take to correct deficiencies. Depending on the severity of the problems, a series of follow-up meetings are held until the problems are corrected or in extreme cases operations are shut in.

Disqualification of Operators

One of our newest initiatives is the development of a process for disqualifying operators with a clear record of poor performance. Previously the ability to operate on the OCS was tied strictly to financial capability. The intent of this initiative is to develop a set of criteria tied to performance that could lead to a hierarchy of prohibitions from being banned from operating on a facility site, to a region-wide ban, to a national ban. The rationale is that operators who are demonstrably incompetent do not belong on the U.S. offshore.

CONCLUSION

In conclusion, the U.S. offshore oil and gas regulatory program continues to seek ways to accomplish its goals of safe and pollution free operations in the most cost effective way. Success in this area will increase in importance in the years ahead as more of the world's energy supplies will

come from offshore areas. Our focus in the U.S. is much more on performance than compliance and in finding ways to provide strong incentives for good performance while preventing those with poor records from participating. We are seeking ways to lower costs by consolidating our requirements into fewer documents and avoiding overlap with other agencies. Critical to our success is industry and other stakeholder involvement and the sense that there is transparency to the process—everyone knows what the rules are and they are applied equally across the board. The U.S. allows companies from around the world to operate in its waters and applies the same rules to them as it does to American companies.

We still have much work ahead of us and welcome the dialogue with other interested parties across the globe. We all have much to gain from excellent safety and environmental performance in terms of economic, energy, and environmental benefits and much to lose if such performance is not achieved.